84-381

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CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SEAFLITE, INCORPORATED, Petitioner

v.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

---

Petition For Writ of Certiorari to the Hawaii Supreme Court

Petitioner for Certiorari - Civil Case

SCHWEIGERT & ASSOCIATES

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Attorney for Petitioner

54 pp

QUESTION PRESENTED FOR REVIEW

Whether the unjust conduct by public officials for the State of Hawaii, including certain members of its judiciary, allowed Petitioner to receive Due Process Of Law?

LIST OF PARTIES AFFECTED

Except for the persons listed in the caption, there are no other parties affected by this case. However, the Aloha Tower Development Corporation, a public corporation set up by Hawaii Rev. Stat., Chap. 206J (1981), although not a party, could be affected by the outcome of this case.

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---

Petition For Writ of Certiorari to the Hawaii Supreme Court

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, SEAFLITE, INCORPORATED, a Hawaii corporation, previously

known as Pacific Sea Transportation, Limited, respectfully prays that a Writ of Certiorari be issued to review the decision of the Supreme Court of the State of Hawaii in the above case.

OPINIONS BELOW

The decision of the Hawaii Supreme Court is attached to this Petition as Appendix "A". It is an unpublished memorandum opinion finding no error and affirming the Judgment of the First Circuit Court, State of Hawaii filed July 7, 1983. A copy of the Circuit Court opinions incorporated by its Judgment are attached hereto as Appendices "B", "C" and "D", respectively.

JURISDICTION

The Supreme Court of the United States has jurisdiction to hear this Petition under 28 U.S.C. §1257(3).

The Hawaii Supreme Court Judgment, attached hereto as Appendix "F", was entered and filed on June 12, 1984, at 2:07 p.m.

No rehearing of the State Supreme Court Judgment was sought by Petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

The following constitutional provisions are involved in this Petition:

1. U. S. Const. amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

2. U. S. Const. amend. XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1975, Petitioner and Respondent entered into contract for lease of State owned property on various islands in Hawaii. (Plaintiff's Exhibits "29-31",

in evidence.) By these leases Petitioner was able to provide inter-island marine service. However, because the ships ultimately proved unsatisfactory for the rough Hawaiian waters, the service was stopped in January 1978. (Tr. 8/3/82 at 286; Plaintiff's Exhibit "2", in evidence.)

Thereafter, the Respondent negotiated with a prospective purchaser of the Petitioner corporation with the goal of reinstituting inter-island marine service. The negotiations led to execution of a settlement agreement. Under it the leases were consolidated and amended. (Plaintiff's Exhibit "1", in evidence.) The term of the new lease ran from June 15, 1975, through June 14, 2010. The new lease was approved as to form by the Attorney General's Office for the State of Hawaii. (Plaintiff's Exhibit "1", in evidence.)

The new lease required no date for reinstitution of the inter-island service. (Plaintiff's Exhibit "1", in evidence.) Under Hawaii law performance within a reasonable time would be expected. Since the ships were not commercially available, only a target date of December 1981 for delivery of the ships could be discussed. (Tr. 8/2/82 at 127:4-8.)

Respondent sent Petitioner notice of termination of its lease on January 8, 1981. (Defendant's Exhibit "R", in evidence.) The basis of this Notice was the Respondent's claim that Petitioner had failed to produce a definitive purchase agreement by December 1980, for the new ships Respondent claimed must be in service by December 1981. Petitioner neither could, nor was he legally required to, accomodate this demand.

Litigation therefore ensued. (Rec. Vol. I at pp. 1-108; Rec. Vol. II at pp. 553-559; Rec. Vol. III at pp. 29-33.)

At the outset of trial the Court CORRECTLY ruled that if anything, the question of REASONABLE TIME to get the inter-island service underway would be the issue. (Tr. 8/2/82 at p. 10.) Based on this, Petitioner should have prevailed for it was an admitted fact that Respondent had no objections to Petitioner's ship selection and felt Petitioner was reasonable in getting one on-line. (Tr. 8/3/82 at 215-216; 9/20/82 at pp. 59-62.) Even the Public Utility Commission of the State of Hawaii with whom Petitioner is licensed to provide this service was satisfied the company was extending its best efforts to get the ships on line. (Tr. 8/2/82 at 86:13-15.)

After review of the lease the Court ruled:

> That the Consolidated Lease is silent as to when the inter-island sea transportation service shall commence. [Finding of Fact No. 10, Rec. Vol. IV at 224; Appendix "B", attached hereto.]

Notwithstanding, the trial court went on to view this as grounds to void the lease, i.e.,

> B. That the commencement date for the inter-island sea transportation service is a material and essential condition or covenant of the consolidated lease and that without such a condition or covenant, consolidated lease becomes meaningless or a nullity.
>
> C. That there was no meeting of the minds by the parties to the consolidated lease on the material and essential element of when the inter-island sea transportation service shall commence and, therefore, the consolidated lease is void and unenforceable. [Conclusions of Law "B" & "C", Rec. Vol. IV at 225; Appendix "B", attached hereto.]

The Court thereafter declared that improvements made to the premises by the

Petitioner now belonged to Respondent without a hearing on the issue. (Tr. 10/18/82 at p. 27.) The court also refused to hear other major claims raised by the pleadings.

Such action by the court was a denial of due process and raised by Petitioner by way of a written motion filed May 11, 1983 (Rec. Vol. V at 212-220) wherein Petitioner stated:

MOTION FOR HEARING ON CLAIMS NOT DECIDED BY THE COURT

> COMES NOW the Plaintiff and moves this Honorable Court, pursuant to Rules 8, 43(a) and 54 of the Hawaii Rules of Civil Procedure, to decide those claims raised by the pleadings herein but not yet heard, decided, and/or reduced to judgment including: (1) Plaintiff's claim for unjust enrichment by the State in the attempted re-taking of the millions of dollars of improvements required or permitted by the State as raised by the second and tenth defense of Plaintiff's Answer to Counterclaim; (2) Plaintiff's constitutional claim under the State and Federal Constitutions for a governmental taking of property without just compensation as raised

by the tenth defense of Answer to Counterclaim; . . .

By Order entered June 16, 1983 (Rec. Vol. VI(a) at 158-159; Appendix "E", attached hereto), the Court denied Petitioner's request.

The pleadings on file showed these matters were before the court, i.e.,

SECOND DEFENSE

> Plaintiff hereby gives notice that the action is a wilful and wanton effort by the Defendant to avoid its duty of just compensation in making way for the Aloha Tower Plaza Project so that this Counterclaim is therefore an abuse of the legal process as it is designed to drive Seaflite out of business.

TENTH DEFENSE

> Plaintiff estimates the value of the property to be several million dollars so that any attempt to cancel said lease amounts to a taking of Seaflite's property without just compensation in violation of its State and Federal Constitutional rights. [Rec. Vol. III at 32-33.]

These pleadings were filed in response

to Respondent's Counterclaim whereby it requested that the court void Petitioner's lease and order Petitioner to vacate the property. (Rec. Vol. II at 483.)

It should be noted that the trial judge hearing this case had earlier been Speaker of the State House of Representatives and while there introduced the legislation called the Aloha Tower Plaza Project, now codified at Hawaii Rev.Stat., Chapter 206J (1981). This conflict was moved on by Petitioner by way of a Motion to Disqualify Judge filed September 20, 1982. (Rec. Vol. III at 257-62.) As Petitioner viewed the case evicting Petitioner would expedite the project's commencement since it could then be built in Petitioner's space. The demand for Petitioner's space was the stated motive for

Respondent's demand of a specific start-up date for inter-island service. (Tr. 9/21/82 at 118:12-14.) The trial court denied Petitioner's motion. (Rec. Vol. IV at 9-10.) The Judgment voiding the Petitioner's lease was entered July 7, 1983. (S. Rec. Vol. VI at pp. 166-167.)

The issue regarding lack of due process was raised to the Hawaii Supreme Court by way of an opening brief wherein Petitioner stated:

> The trial court erred in not giving Seaflite due process of law shown in many ways, e.g.,
>
> A. By the Court's refusal to disqualify itself despite Seaflite's motion. (Rec. Vol. III at pp. 257-262; Rec. Vol. IV at 9-10; Tr. 9/20/82 at 2-9.)
>
> B. By the trial court's refusal to recognize, among other things, Seaflite's claim of unjust enrichment inurring to the lessor in this case as a result of the Court's Order of December 27, 1982. The Court held the improvement "inurred" to the State when the lease was modified. (Tr. 10/9/82 at p. 27.) This conclusion was formerly object-

ed to by motion filed May 11, 1983 (Rec. Vol. III at pp. 212-220), and denied by Order entered June 16, 1983. [S.Rec. Vol. VI at pp. 158-159; Petitioner's Opening Brief at 9 and 10.]

By this time the trial judge was a Hawaii Supreme Court Justice, although he did not sit on the appeal panel hearing this case.

REASONS FOR GRANTING WRIT

In a civil forum, no greater reason can exist for United States Supreme Court action than to prevent the unjust taking of property by public officials without due process of the law. A taking can occur by way of seizure. It may also take place by way of arbitrary court action as was done here.

In the case at bench, there is no rational basis for the trial court

opinion. All parties recognized Petitioner was reasonable in its efforts to reinstitute inter-island service. In this regard the trial court's decision to void the Petitioner's contract for omission of a date when its ships must be on-line disregards established law in Hawaii, i.e., where an agreement does not provide time for performance, it MUST be read as requiring that performance be commenced within a REASONABLE TIME. (See e.g., Bishop Trust Company, Ltd. v. Kamokila Development Corporation, 57 Haw. 330, 555 P.2d 1193 (1976); In Re Sing Chong Company, 1 Haw.App. 236, 617 P.2d 578 (1980).

The Hawaii Supreme Court, by its memorandum decision, which under Rule 35(b), Hawaii Rules of Appellate Procedure, will not be published, compounded this disregard for due process of law. Such

action by the court can only be explained as politically motivated without regard to law.

It is imperative that Hawaii be reminded of the need for an independent judiciary which was not afforded under the facts of this case. See Justice John Paul Stevans, Reflections on the Removal of Sitting Judges, 13 Stetson L. Rev. (1984). Every so often those in power in Hawaii forget this basic tenent of our American democracy. See e.g., Sotomura v. County, 402 F.Supp. 95 (D.Haw. 1975).

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari must be granted.

DATED: Honolulu, Hawaii, September 4, 1984.

JOHN F. SCHWEIGERT
Attorney for Petitioner

APPENDICES

NO. 9095

IN THE SUPREME COURT
OF THE STATE OF HAWAII

OCTOBER TERM 1983

SEAFLITE, INCORPORATED,	CIVIL NO. 64459
Plaintiff-Appellant,	APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, FILED DECEMBER 27, 1982; AND SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER, FILED APRIL 13, 1983
vs.	
DIRECTOR, Department of Transportation, State of Hawaii,	
Defendant-Appellee,	
and	FIRST CIRCUIT COURT
JOHN DOES 1-50; JOHN DOE PARTNERSHIPS 1-50; and JOHN DOE CORPORATIONS 1-50;	HONORABLE JAMES H. WAKATSUKI, Judge
Defendants.	
SEAFLITE, INCORPORATED,	CIVIL NO. 64459
Plaintiff-Appellant,	APPEAL FROM THE FINAL JUDGMENT OF JULY 7, 1983
vs.	
DIRECTOR, Depart-	FIRST CIRCUIT COURT

APPENDIX "A"

ment of Transportation, State of Hawaii, Defendant-Appellee, and HOKUNANI ASSOCIATES, INC., dba HOKUNANI CATAMARAN CRUISES, Intervenor.	HONORABLE JAMES H. WAKATSUKI Judge
SEAFLITE, INCORPORATED, Plaintiff-Appellant, Cross-Appellee, vs. DIRECTOR, Department of Transportation, State of Hawaii, Defendant-Appellee, Cross-Appellant, and JOHN DOES 1-50; JOHN DOE PARTNERSHIPS 1-50; and JOHN DOE CORPORATIONS 1-50, Defendants,	CIVIL NO. 64459 APPEAL AND CROSS APPEAL FROM THE JUDGMENT, FILED JULY 7, 1983; AND ORDER DISMISSING DEFENDANT'S MOTION TO AMEND JUDGMENT OR IN THE ALTERNATIVE FOR RECONSIDERATION OF JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE AFFIDAVITS AND ATTACHMENTS, FILED AUGUST 15, 1983 FIRST CIRCUIT COURT HONORABLE JAMES H. WAKATSUKI Judge

and)
)
HOKUNANI ASSOCIATES,)
INC., dba HOKUNANI)
CATAMARAN CRUISES,)
)
Intervenor.)
)

MEMORANDUM OPINION

Seaflite, Incorporated (Seaflite) appeals from the lower court's findings of fact and conclusions of law, where the lease between the Department of Transportation and Seaflite was found to be null and void. The State cross-appeals from the lower court's ruling that the fair rental value to be paid by Seaflite to the State was to be paid from December 27, 1982, the date of the lower court's order, instead of from July of 1979, the date Seaflite entered the premises.

After careful consideration of the arguments and the record, we find no error in the lower court's rulings.

Affirmed.

DATED: Honolulu, Hawaii,
May 10, 1984.

H. LUM
EDWARD H. NAKAMURA
FRANK PADGETT
YOSHIMI HAYASHI
BERTRAM T. KANBARA
Supreme Court Justices

Filed May 10, 1984

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Attorneys for Defendant
Director, Dept. of Transportation

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

SEAFLITE, INCORPORATED,	CIVIL NO. 66459
Plaintiff,	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
vs.	
DIRECTOR, Department of Transportation, State of Hawaii, et al.,	
Defendants.	

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

WHEREAS, a jury-waived trial was con-

APPENDIX "B"

ducted herein; and

WHEREAS, the Court having bifurcated the issues raised by the parties' pleadings, those issues being: 1) whether there was a need for Plaintiff to provide an interisland marine transportation service by a certain date and provide a definitive purchase agreement for a vessel by a certain date; and 2) whether there was a violation of the consolidated lease due to breach of the subletting provision; and

WHEREAS, bifurcation of the issues was done by consent of the parties at pretrial conference; and

WHEREAS, the Court having indicated that a resolution of the first issue heard may result in the second issue being moot; and

WHEREAS, the Court having considered the evidence and the record and files

herein and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the State of Hawaii, Department of Transportation, Harbors Division, Consolidated Lease (Nos. H-75-2, H-75-3, and H-75-4) dated July 9, 1979 was entered into and executed by the Plaintiff and the Defendant.

2. That prior to said execution, Plaintiff, through Mr. Lee Martin and Mr. Lincoln Ishida, his attorney at that time, negotiated the terms and conditions of and for the consolidated lease.

3. That, although Mr. Martin did not own any stock of Pacific Sea Transportation, Limited, now known as Seaflite, Inc., at the time Mr. Martin and his attorney negotiated with the Defendant for the consolidated lease, Mr. Martin

represented to the Defendant that he was the prospective purchaser of the company in question, namely Pacific Sea Transportation, Limited.

4. That, as the prospective purchaser, Mr. Martin individually and through Mr. Ishida, his attorney, negotiated with the Defendant not only the lease terms and conditions but also the past due and delinquent taxes owed by Pacific Sea Transportation, Limited, to the State.

5. That the Defendant relied on the representations made by Mr. Martin and his attorney, and Mr. Martin knew that the Defendant acted and did act in reliance on his representations.

6. That the Defendant, relying on oral representations made by Mr. Martin and his attorney Lincoln Ishida that inter-island sea transportation service will be commenced within two years after the

date of the consolidated lease, entered into and executed the consolidated lease.

7. That the Plaintiff executed and entered into the consolidated lease with the intent to commence interisland sea transportation service within two years as the target date, after the date of the consolidated lease.

8. That the Plaintiff takes the position that commencement of the interisland sea transportation service was and is a material and essential condition or covenant of the consolidated lease but that the date of commencement was meant to be the date when Plaintiff could actually acquire a ship that can perform at a 97 percent reliability of service, and that so long as Plaintiff could show that it is acting in good faith in attempting to acquire a ship

that can perform at a 97 percent reliability of service, Plaintiff has met the material and essential condition and/or covenant of the consolidated lease.

9. That the Defendant takes the position that commencement of the interisland sea transportation service was and is a material and essential condition or covenant of the consolidated lease and that the date of commencement was two years from the date of the consolidated lease or at the latest December of 1981.

10. That the consolidated lease is silent as to when the interisland sea transportation service shall commence.

11. That the parties to the consolidated lease intended and understood that a condition or covenant of a commencement date for interisland sea transportation service was part of the consoli-

dated lease, but that the parties negotiated, concluded, and executed the consolidated lease with differing understanding as to the commencement date.

12. That the Plaintiff has occupied and made use of the demised premises and has not made certain rental payments, including payments for parking spaces to the Defendant but instead has been unilaterally depositing said sums into an escrow account.

CONCLUSIONS OF LAW

Based upon the foregoing facts, the Court concludes as follows:

A. That Pacific Sea Transportation, Limited, now known as Seaflite, Inc., is estopped from denying that Mr. Lee Martin did not represent or was not acting on behalf of Plaintiff prior to Mr. Martin's acquisition of Plaintiff's stocks.

B. That the commencement date for the inter-island sea transportation service is a material and essential condition or covenant of the consolidated lease and that without such a condition or covenant, consolidated lease becomes meaningless or a nullity.

C. That there was no meeting of the minds by the parties to the consolidated lease on the material and essential element of when the inter-island sea transportation service shall commence and, therefore, the consolidated lease is void and unenforceable.

D. That the Plaintiff having occupied and made use of the premises is liable to pay the rental for the use of premises and the use of parking stalls.

E. That the consolidated lease being void and unenforceable the issue concerning subletting is moot.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A hearing be held as soon as practicable as to the rental Plaintiff owes the Defendant for and during the use of the premises in question.

2. Pending such hearing the sums of money held by Plaintiff in escrow pending the resolution of the rental due and owing the Defendant be deposited with the Clerk of this Court within three days from September 28, 1982.

3. Plaintiff shall vacate the premises within thirty (30) days from September 28, 1982.

DATED: Honolulu, Hawaii,
December 27, 1982

J.H. Wakatsuki
Judge of the Above-Entitled Court

APPROVED AS TO FORM:

JACK F. SCHWEIGERT
Attorney for Plaintiff

Filed December 27, 1982

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

SEAFLITE, INC.,	) CIVIL NO. 64459
Plaintiff,	) SUPPLEMENTAL FINDINGS OF FACT
vs.	) AND CONCLUSIONS OF LAW AND ORDER
DIRECTOR, Department of Transportation, State of Hawaii, et al.,	)
Defendants.	)

SUPPLEMENTAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND ORDER

WHEREAS, a jury-waived trial was conducted herein; and,

WHEREAS, the Court having orally issued its Findings of Fact, Conclusions of Law and Order on September 28, 1982, which was filed on December 27, 1982 and the Court having issued an Order and Amended Order filed November 29, 1982; and

WHEREAS, the Order of December 27, 1982 and the Order and Amended Order of November 29, 1982 both ordered that a hearing be held to determine the amount of rental Plaintiff should pay Defendant for the use of the premises in question; and

WHEREAS, the Court having held a hearing on January 24, 1983 on the issue of the rental which Plaintiff should pay Defendant for the use of the premises and the Court having considered the evidence and the record and files herein and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That Plaintiff has been using and occupying those premises described in the Consolidated Lease Nos. H-75-2, H-75-3, and H-75-4, since July 9, 1979.

2. The premises involve property at Pier 8, Honolulu Harbor, Oahu; Maalaea Small Boat Harbor, Maui; and Nawiliwili Harbor, Kauai.

3. That part of the premises were and are being used by the Plaintiff and subtenants of the Plaintiff for office space, storage space, mooring of boats, workshops, manufacturing of ice, and parking cars.

4. That the fair market rental as of July 1979 for the Pier 8 premises at Honolulu Harbor for office space is $ .50 per square foot per month, and for storage space is $ .28 per month, totalling $3,896.82; for mooring of boats is $1,500.00 per month; and for the parking of cars is $3,390.00 per month, for a total fair market rental of $8,786.82 per month.

5. That the fair market rental for the

premises at Maalaea Small Boat Harbor, Maui, is $1,180.00 per month.

6. That the fair market rental for the premises at Nawiliwili Harbor, Kauai, is $211.00 per month.

7. That since July 9, 1979 Plaintiff has paid to the Defendant $198,649.89 for rentals and parking charges for the use of the premises.

8. That fair market rental for the premises is $10,177.82 per month.

CONCLUSIONS OF LAW

The Court concludes that Plaintiff owes the Defendant the foregoing fair market rental for the use of the premises beginning from December 27, 1982, the filing date of the Order declaring the purported lease dated July 9, 1979 to be null and void.

ORDER

IT IS THEREFORE ORDERED, ADJUGED, AND

DECREED THAT:

1. Plaintiff shall pay to the Clerk of this Court the said rental due and owing Defendant plus any future rent to become due on a monthly basis from and after the filing of this Order.

2. Judgment in accordance with this Findings of Fact, Conclusions of Law and Order; the Findings of Fact, Conclusions of Law and Order of December 27, 1982; and the Order and Amended Order of November 29, 1982 shall be entered.

DATED: Honolulu, Hawaii,
April 12, 1983

J. H. Wakatsuki
Judge James H. Wakatsuki

Filed April 13, 1983

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

SEAFLITE, INCORPORATED, Plaintiff, vs. DIRECTOR, Department of Transportation; JOHN DOES 1-50; JOHN DOE PARTNERSHIPS 1-50; JOHN DOE CORPORATIONS 1-50, Defendants.	CIVIL NO. 64459 ORDER AND AMENDED ORDER Hearings: September 28, 1982 and October 18, 1982

ORDER AND AMENDED ORDER

Plaintiff's "Motion to Certify" the Court's decision finding that the 1979 consolidated lease was null, void and unenforceable, and the "Motion for Injunction Pending Appeal" having come on for hearing on October 18, 1982 and based on arguments made by counsels and from the records and file in this matter

the foregoing Motions be and are hereby denied; and

That the oral Order of this Court entered into the record on September 28, 1982 be and is hereby amended and the following is entered herein as an Amended Order, to-wit:

1. That as soon as practicable, a hearing shall be held as to the amount of rental Plaintiff should pay Defendant for the use of the premises in question.

2. Plaintiff shall vacate the premises in question on or before thirty days after November 29, 1982, but this order to vacate said premises shall be automatically stayed in the event Plaintiff deposits with the Clerk of this Court the sum of $3,808.00 for each of the months of October and November, 1982 and the same amount per month thereafter beginning on the 15th of December 1982,

on the 15th day of each month thereafter plus all amounts that are in excess of $3,808.00 which Plaintiff receives as gross montly rent from its subtenants beginning from December 20, 1982 and for every month thereafter on the 20th day of each month pending the hearing on the determination of the fair rent Plaintiff should pay Defendant for the use of the premises in question.

DATED: Honolulu, Hawaii,
November 29, 1982

James H. Wakatsuki
Judge of the Above-Entitled Court

Filed November 29, 1982

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Attorneys for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SEAFLITE, INCORPORATED, Plaintiff, vs. DIRECTOR, Department of Transportation, State of Hawaii; JOHN DOES 1-50; and JOHN DOE PARTNERSHIPS 1-50; and JOHN DOE CORPORATIONS 1-50, Defendants.	CIVIL NO. 64459 ORDER DENYING MOTION FOR HEARING ON CLAIMS NOT DECIDED BY THE COURT

ORDER DENYING MOTION FOR HEARING ON CLAIMS NOT DECIDED BY THE COURT

APPENDIX "E"

Plaintiff's Motion for Hearing on Claims not Decided by the Court having come on for hearing before the Honorable James A. Wakatsuki in his Courtroom on Tuesday, May 31, 1983, and the Court having heard the arguments of counsel and reviewed the memoranda submitted in accordance therewith and the records on file herein,

IT IS HEREBY ORDERED that Plaintiff's Motion for Hearing on Claims not Decided by the Court is denied.

DATED: Honolulu, Hawaii,
June 15, 1983

J.H. Wakatsuki
Judge of the Above-Entitled Court

Filed June 16, 1983

NO. 9095

IN THE SUPREME COURT
OF THE STATE OF HAWAII

OCTOBER TERM 1983

SEAFLITE, INCORPORATED, Plaintiff-Appellant, vs. DIRECTOR, Department of Transportation, State of Hawaii, Defendant-Appellee, and JOHN DOES 1-50; JOHN DOE PARTNERSHIPS 1-50; and JOHN DOE CORPORATIONS 1-50, Defendants.	CIVIL NO. 64459 APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FILED DECEMBER 27, 1982; AND SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER, FILED APRIL 13, 1983 FIRST CIRCUIT COURT HONORABLE JAMES H. WAKATSUKI, Judge
SEAFLITE, INCORPORATED, Plaintiff-Appellant, vs. DIRECTOR, Depart-	CIVIL NO. 64459 APPEAL FROM THE FINAL JUDGMENT OF JULY 7, 1983 FIRST CIRCUIT COURT

APPENDIX "F"

ment of Transportation, State of Hawaii, Defendant-Appellee, and HOKUNANI ASSOCIATES, INC., dba HOKUNANI CATAMARAN CRUISES, Intervenor.	HONORABLE JAMES H. WAKATSUKI, Judge
SEAFLITE, INCORPORATED, Plaintiff-Appellant, vs. DIRECTOR, Department of Transportation, State of Hawaii, Defendant-Appellee, and JOHN DOES 1-50; JOHN DOE PARTNERSHIPS 1-50; and JOHN DOE CORPORATIONS 1-50, Defendants. and	CIVIL NO. 64459 APPEAL FROM THE JUDGMENT FILED JULY 7, 1983; AND ORDER DISMISSING DEFENDANT'S MOTION TO AMEND JUDGMENT OR IN THE ALTERNATIVE FOR RECONSIDERATION OF JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE AFFIDAVITS AND ATTACHMENTS, FILED AUGUST 15, 1983 FIRST CIRCUIT COURT HONORABLE JAMES H. WAKATSUKI Judge

HOKUNANI ASSOCIATES,)
INC., dba HOKUNANI)
CATAMARAN CRUISES,)
)
Intervenor.)
)

JUDGMENT ON APPEAL

Pursuant to the Memorandum Opinion of the Supreme Court of the State of Hawaii filed on May 10, 1984, the judgment of the lower court is affirmed.

DATED: Honolulu, Hawaii,
June 12, 1984.

//s// EUGENE L. SABADO
Clerk

APPROVED:

//s// H. LUM
Justice

Filed June 12, 1984

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SEAFLITE, INCORPORATED, Petitioner

v.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

---

Petition For Writ of Certiorari to the Hawaii Supreme Court

Proof of Service - Certificate By Bar Member

SCHWEIGERT & ASSOCIATES

JOHN F. SCHWEIGERT
250 South Hotel Street
Suite 200
Honolulu, Hawaii 96813
Telephone: (808) 533-7491
Attorney for Petitioner

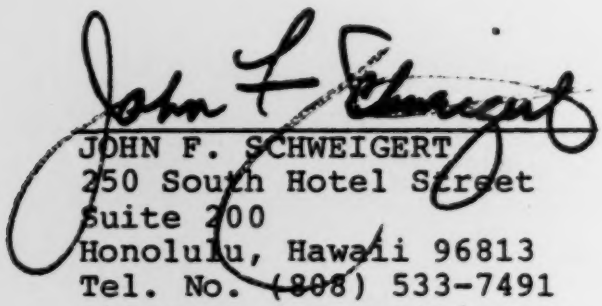
Proof of Service - Certificate
By Bar Member

I, JOHN F. SCHWEIGERT, the attorney for SEAFLITE, INCORPORATED, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that, on the 7th day of September, 1984, I served copies of the foregoing Petition for Writ of Certiorari on the parties thereto, as follows:

1. On DIRECTOR, Department of Transportation, State of Hawaii, by leaving three copies thereof at the office of Randall Y.K. Young, Esq., Deputy Attorney General, attorney for Respondent DIRECTOR, Department of Transportation, State of Hawaii, at 214-B Old Federal Building, 335 Merchant Street, Honolulu, Hawaii 98613.

2. On HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, by leaving

three copies thereof at the office of Gary B.K.T. Lee, attorney for Respondent HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, at Suite 1717, Pacific Tower, 1001 Bishop Street, Honolulu, Hawaii 96813.



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Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. 84-381

SEAFLITE, INCORPORATED, Petitioner

vs.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO THE HAWAII SUPREME COURT

BRIEF FOR RESPONDENT DIRECTOR, DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII, IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE HAWAII SUPREME COURT

BRIEF FOR RESPONDENT DIRECTOR, DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII, IN OPPOSITION

JURISDICTION

This Court does not have jurisdiction to consider this petition as the rights and/or privileges Petitioner claims under the Constitution

of the United States were not properly raised before the State of Hawaii Supreme Court.

STATEMENT OF THE CASE

This case involves a landlord-tenant dispute in the context of Respondent's attempts to institute marine transportation, i.e. hydrofoils or surface effect vessels, between the islands of Oahu, Maui and Kauai in the State of Hawaii. Following a series of mishaps with Petitioner's corporate predecessor Pacific Sea Transportation, Limited (hereinafter PSTL) leases between Respondent and PSTL were terminated. See Defendant's Exhibit F. These leases all contained clauses that improvements made to Respondent's property by PSTL would revert to Respondent upon termination of the leases. See Plaintiff's Exhibits 29, 30, and 31. The improvements which Petitioner claims title to were in fact constructed by PSTL (Tr. 8/3/82, at 276:10-20) and reverted to Respondent. Respondent negotiated a Consolidated Lease with Petitioner to supplant those earlier leases. Prior to execution of

the Consolidated Lease, Petitioner's president purchased all of PSTL's stock for $10. See Plaintiff's Exhibit 3.

Respondent entered into this Consolidated Lease based on representations made to Respondent by Petitioner's president and Petitioner's president's attorney that Petitioner would reinstate interisland marine transportation service within two years of executing the Consolidated Lease, or the summer of 1981. State of Hawaii officials testified that without this definitive commencement date for interisland service, the State would never have entered into a lease with Petitioner. Towards this end of achieving a start up of interisland marine transportation service by mid-1981, Respondent's understanding was that Petitioner would furnish Respondent with a definite purchase agreement for the vessels Petitioner would use to commence that service.

In fact, Petitioner never did commence interisland marine transportation service. Disputes arose as to Petitioner's obligations under the

Consolidated Lease. Although Petitioner was supposed to use the leased premises to reinstate interisland marine transportation in the State of Hawaii, Petitioner in fact sublet Respondent's property for parking spaces, office space, storage space, mooring of boats, workshops, and manufacturing of ice. See Appendix C to Petitioner's Brief, at 2-3. These subleases were for the most part in violation of the Consolidated Lease and contrary to law, as they were not approved by the State Board of Land and Natural Resources.

Petitioner filed suit in the Circuit Court of the First Circuit, State of Hawaii, and Respondent counterclaimed, asking the trial court to find the Consolidated Lease null and void for lack of a material term.

Trial in this matter lasted 10 days, spread over several months. The trial court indicated that it would consider:

> Whether there was an agreement or whether there was an understanding or there was a mutual meeting of the mind regarding when, if any time, that the interisland

> transportation sea service should have started or not. (Tr. 8/4/82, at 364:21-25)

Testimony at trial revealed that Petitioner's president did not feel that he was under any time obligation to commence service, and that Petitioner could take ten years to commence service.

Given those divergent positions, the trial court found that there was no meeting of the minds on this essential condition of the Consolidated Lease. As the Lease was one for the express purpose of instituting interisland marine transportation, a commencement date for such service would be material and essential.

Petitioner appealed the trial court's ruling to the State of Hawaii Supreme Court, which after reviewing the 76 exhibits, 17 volumes of depositions, 23 volumes of transcripts, and over 2,000 pages of pleadings found no reversible error in the trial court's decision. It therefore affirmed.

During this state court litigation, Petitioner also filed suit in the United States District Court for the District of Hawaii (Seaflite, Incorporated v. Higashionna, et al., U.S.D.C. No. 83-0858). Petitioner alleged that its "property" (PSTL lease improvements) was being taken without due process or just compensation. Petitioner's complaint was dismissed, as the federal court found that adequate state due process protections were available to Petitioner. See Appendix A. Petitioner's appeal of this dismissal was subsequently withdrawn. See Appendix B.*

ARGUMENT

I. NO FEDERAL CONSTITUTIONAL CLAIMS WERE RAISED BEFORE THE HAWAII SUPREME COURT.

Petitioner admits that before the Hawaii Supreme Court, it merely

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* It should be noted that the Public Utilities Commission of the State of Hawaii has subsequently revoked Seaflite's license to operate.

claimed that "The trial court erred in not giving Seaflite due process of law." As such, its petition before this Court is fatally flawed for the same reasons enunciated in Bowe v. Scott, 233 U.S. 658, 664-65 (1914). In Bowe, it was argued that a Federal question had been raised by the passage:

> That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.

This Court wrote that:

> [I]t is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court.

Similarly here, the State of Hawaii Constitution has a due process clause, see Article I, Sec. 4, and Petitioner has no basis to invoke this Court's jurisdiction. See also Brady v.

Maryland, 373 U.S. 83, 91 (1963) (separate opinion of White, J.).

II. THE HAWAII SUPREME COURT'S DECISION RESTED ON AN INDEPENDENT AND ADEQUATE STATE GROUND.

It is well-settled that if a state court judgment rests on an independent and adequate state ground, a petition for writ of certiorari should not be granted. See Wilson v. Lewis, Inc., 355 U.S. 597 (1958); Herb v. Pitcairn, 324 U.S. 117 (1945).

Petitioner must clearly and affirmatively demonstrate that the Hawaii Supreme Court's decision cannot be supported by state grounds. "Where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment." See Durley v. Mayo, 351 U.S. 277, 281 (1956); Stembridge v. Georgia, 343 U.S. 541, 547 (1952).

Here, leasehold improvements reverted to a landlord when certain leases were terminated. A subsequent lease was found null and void for

failure of a meeting of the minds on an essential term. This finding of invalidity was based on a review by the trial court of dozens of exhibits, hundreds of pages of pleadings, and the demeanor and credibility of numerous witnesses. It strains credulity that any party should claim that such an evidentiary finding does not rest on an independent and adequate state ground.

III. THIS COURT DOES NOT SIT TO REVIEW ISSUES OF LOCAL PROPERTY LAW.

It cannot be overemphasized that this petition turns on the unique facts of this case and raises questions of interest only to the parties herein. Those questions have been resolved in Respondent's favor by state trial and appellate courts and the United States District Court for the District of Hawaii.

For example, the trial court's judgment involved questions of the parol evidence rule and ultimately whether a lease was null and void for failure of a mutual meeting of the minds. Determination of such questions hinged upon the intent of the parties, as

evaluated by assessing the validity and credibility of witnesses. This in Hawaii, as in every other jurisdiction in the United States, is a proper function of a trial court. There is nothing sinister or conspiratorial about a trial court's application of long-standing and fundamental Hawaii law on lease contracts. See Jones v. Don L. Gordon Corp., 60 Haw. 12, 586 P.2d 1024 (1978); Shinn v. Yee, Ltd., 57 Haw. 215, 553 P.2d 733 (1976); Earl M. Jorgenson Co. v. Mark Constr. Inc., 56 Haw. 466, 540 P.2d 978 (1975).

Regarding the question of whether parties have validly agreed to a contract, this Court has repeatedly refused to review an issue so obviously local in nature. See Donohue v. Vosper, 243 U.S. 59 (1917) (adverse possession claim); Kryger v. Wilson, 242 U.S. 171 (1916) (contradictory claims to land based on what law governed cancellation of a land contract).

Petitioner claims a gargantuan conspiracy which presumably includes the legislative, executive, and judicial systems of a state of this country, as

well as the Federal judiciary in Hawaii. However, it is clear that this case turns on nothing more than particular parties' rights under particular leases and particular applications of local contract and property law. Petitioner has failed to cite any conflict between the Hawaii Supreme Court's decision here and any other jurisdiction. Petitioner does no more than point to other Hawaii cases and argue with the Hawaii Supreme Court. Reconsideration is the function of the Hawaii Supreme Court, not this Court.

IV. THE DECISION APPEALED FROM WAS FAIR AND CORRECT.

The trial court correctly found, and the Hawaii Supreme Court affirmed, that based on the substantial evidence in the voluminous record Petitioner and Respondent simply had not agreed on a vital provision of the Consolidated Lease. However, before Petitioner vacated Respondent's property, it subleased that property for four years. For that privilege, Petitioner's president merely paid $10

to PSTL and partially paid PSTL's back taxes. It should be noted that the same decision affirming the trial court ruling that the Consolidated Lease was null and void also denied Respondent's cross-appeal for greater rentals. See Appendix A to Petitioner's Brief.

Given the difference between Petitioner and Respondent on the necessity of a start-up date for interisland marine transportation service, the trial court could correctly rule only that the Consolidated Lease was null and void. Petitioner cannot deny that such a ruling was supported by the vast weight of the evidence.

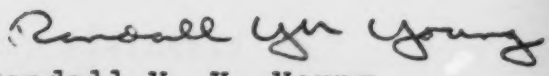
CONCLUSION

For all of the above reasons, the Petition for Writ of Certiorari should be denied, as this matter clearly does not warrant this Court's attention,

and a fair and just result was reached by the State of Hawaii judicial system.

DATED: Honolulu, Hawaii, October 9, 1984.

Respectfully submitted,



Randall Y. K. Young
Deputy Attorney General
405 State Capitol
Honolulu, Hawaii 96813
Counsel for Respondent
Director, Department of Transportation, State of Hawaii

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT

DOCKET NUMBER 83-0858

Name of Judge or Magistrate - Samuel P. King

SEAFLITE, INCORPORATED, Plaintiff

vs. RYOKICHI HIGASHIONNA, etc., et al., Defendants

Decision by Court. This action came to hearing before the Court with the judgment named above presiding. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is hereby dismissed on the ground that Plaintiff has failed to state a 42 U.S.D. §1983 claim because adequate state due process protections are available to Plaintiff.

Filed in the United States District Court District of Hawaii November 28, 1983 at 1 o'clock and 00 min. P.M. WALTER A.Y. H. CHINN, CLERK.

cc: Jack F. Schweigert, Tany S. Hong, Wilfred K. T. Pong, Annette Y. W. Chock and Randall Y. K. Young

Date: November 28, 1983

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEAFLITE, INCORPORATED,	)
	)
Plaintiff/Appellant,	)
	)
vs.	)
	)
RYOKICHI HIGASHIONNA, Director, of Transportation, State of Hawaii; KENNETH KEITH; EILEEN ANDERSON; SUMUMO ONO; DONALD KUYPER; AARON LEVINE; THOMAS TRASK, Directors Aloha Tower Development Corp.; ROBERT HOLMAN, Executive Officer, Aloha Tower Development Corp.; and HIDETO KONO, Director, Dept. of Planning and Economic Development, State of Hawaii,	)
	)
Defendants/Appellees.	)

C.A. NO. 83-2724 ORDER
D.C. No. CV-83-0858-SPK HAWAII

ENTRY OF DISMISSAL

Pursuant to Rule 42(b), Federal Rules of Appellate Procedure, and the stipulation submitted by the parties, dismissal of this appeal is herewith entered.

(X) Each party to bear its own costs.

Phillip B. Winberry
Clerk of Court
BY: /s/ Sigmon Zeleke
Deputy Clerk

Filed April 20, 1984

APPENDIX B

Office-Supreme Court, U.S.
FILED
OCT 20 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-381

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SEAFLITE, INCORPORATED, Petitioner

v.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

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Petition For Writ of Certiorari to the Hawaii Supreme Court

Reply Brief For Petitioner

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Reply Brief for Petitioner

I. INTRODUCTION

Many of the facts articulated by the Director in the Brief for Respondent Director, Department of Transportation, State of Hawaii (hereafter referred to

as "Director"), are factually incorrect, not found in the record and/or otherwise irrelevant to the arguments before this Court. For example, Seaflite has NEVER had a corporate predecessor despite the Director's reference to one. (Director's Brief at p.2.) However, one misstatement by the Director does bear rebuttal. That is the decision by the Hawaii Supreme Court does not rest on local property law. In fact, it is not supported by any law which is why Seaflite calls it arbitrary. Seaflite's argument on this point follows.

II. ARGUMENT

There is no question that Seaflite's property was taken without due process of law for no compensation was awarded. Interestingly, the Director fails to identify the source of local "property"

law on which the Hawaii Supreme Court decision allegedly rested. Hawaii courts have long since considered landlord/ tenant relationships to be one of contract. Aluli v. Trusdell, 54 Haw. 417, 508 P.2d 1217 (1973). In fact none exists. In short, the decision was arbitrary and paved the way for construction of a government project calling for Seaflite's space. Seaflite is entitled to compensation as part of its due process rights under the Fifth Amendment to the Constitution of the United States. To date this has not occurred.

Please note this issue was specifically raised by Seaflite to the Hawaii Supreme Court. (See Petition at pp.12-13.) At that time the Attorney General complained such argument was a "last

ditch attempt." (Answering Brief, Director, Hawaii Supreme Court, at p.43.) To such claim Seaflite reponded its due process argument was far from a last ditch effort for it was premised by the Fifth Amendment, i.e.,

> The United States Constitution demands: No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public purpose without just compensation. [U.S.Const., Amend. V.] [Reply Brief of Seaflite at p.2 filed Hawaii Supreme Court 2/22/84.]

The Director's statement the due process argument was not even raised is <u>false</u>. (Director's Brief at pp.1-2, 6-8.)

It must be stressed that under its contract with the Director, Seaflite was obligated to improve its leased space at a cost of at least $2 million. In that regard, it is written:

> The lessee will, at its own cost and expense, and within 60 days after the commencement of its lease,

> commence construction of the hydrofoil terminals and related facilities at a cost of not less than $1,250,000 for the Honolulu harbor premises, not less than $250,000 for the Nawiliwili harbor premises, and not less than $540,000 for the Maalaea Small Boat harbor premises, and will have said improvements completed within two years after the date of the commencement of this lease, free from all liens and claims. [Plaintiff's Exhibit "1", in evidence.]

These improvements were made. Furthermore, the cost of these improvements is debated; however, either figure quoted is high. The Director claims they cost $2.67 million. Seaflite argues the more correct figure is $6.7 million. (Transcript 8/9/82 at 594.)

Although Seaflite does not question the State's right to condemn its property for government projects, it strongly objects to situations wherein the Director is able to confiscate its property, which includes its improvements, without

giving Seaflite any compensation. Remembering there was no finding of fault or breach of lease by Seaflite in the State courts, the Fifth and Fourteenth Amendments are supposed to prohibit such action from occurring.

CONCLUSION

Based on the foregoing arguments as well as those put forth in the Petition filed by Seaflite on September 10, 1984, the Writ should be granted.

DATED: Honolulu, Hawaii, October 19, 1984.

Respectfully submitted,

By: _____
JOHN F. SCHWEIGERT
Attorney for Petitioner

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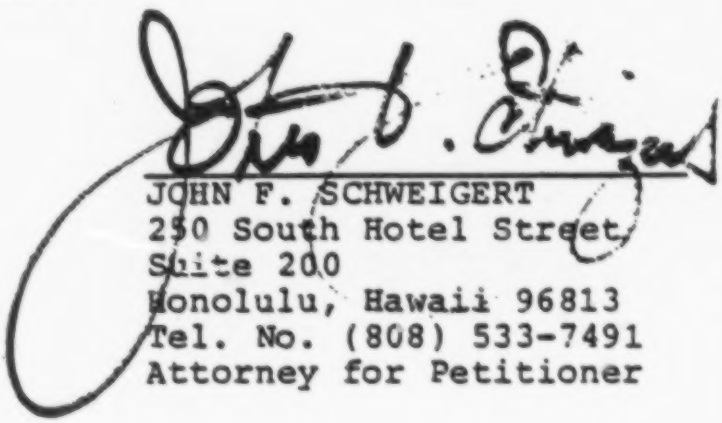
By Bar Member

I, JOHN F. SCHWEIGERT, the attorney for SEAFLITE, INCORPORATED, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 19th day of October, 1984, I served copies of the foregoing Reply Brief on the parties thereto, as follows:

1. On DIRECTOR, Department of Transportation, State of Hawaii, by leaving three copies thereof at the office of Randall Y.K. Young, Esq., Deputy Attorney General, attorney for Respondent DIRECTOR, Department of Transportation, State of Hawaii, at 214-B Old Federal Building, 335 Merchant Street, Honolulu, Hawaii 98613.

2. On HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, by leaving

three copies thereof at the office of Gary B.K.T. Lee, attorney for Respondent HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, at Suite 1717, Pacific Tower, 1001 Bishop Street, Honolulu, Hawaii 96813.



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